

Judge Baker, cont.

tees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board's Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Judge Brown, cont.

State Bar Association; on the Alternative Dispute Resolution Committee of the Indiana Judicial Conference; and on the Indiana Supreme Court Judges and Lawyers Assistance Program Committee. She is a life member of the IU Alumnae Association, and, in honor of her father, is a longtime member of the American Legion Auxiliary.

Since 1998, Judge Brown has been an Indiana Registered Civil Mediator. She served on the Board of Directors of the Indiana Judicial Conference and on the Board of Managers of the Indiana Judges Association. She is a former member of the Indiana Supreme Court Character and Fitness Committee, as well as

the Judicial Administration Committee and the Appointed Judicial Officers Task Force of the Indiana Judicial Conference. She was a Leader in the Brooks Inn of Court in Evansville and a Bencher in the Sagamore Inn of Court in Indianapolis. She was an officer for four years of the Dubois County Bar Association, serving as President in 1985.

A 1993 graduate of the Richard G. Lugar Excellence in Public Service Series, she served on that organization's Board of Governors from 1993 to 1998. In 1992, Judge Brown received the Outstanding Young Hoosier Award from the Indiana Jaycees, one year after the Jaycees presented her with its Distinguished Service Award.

A Dubois County native, she is the proud mother of two children, an elementary teacher and a physician-graduate of the IU School of Medicine; mother-in-law to an engineer and another physician-graduate of the IU School of Medicine; and a very involved grandmother of two little girls.

Attorneys for the Parties

For the Appellant

Ellen M. O'Connor graduated from the School of Foreign Service, Georgetown University, Washington, D.C. in 1981 and from Indiana University School of Law, Indianapolis in 1987. She attended the National College for Criminal Defense in Macon, GA in 1994. She worked for the Marion County Prosecutor's Office from 1983-1990, starting as a paralegal and ending as a major felony prosecutor. She was a private practitioner concentrating in criminal law from 1990-2004.

In 2004, she joined the Agency full time doing appellate and training work. She has argued before the Indiana Court of Appeals, the Indiana Supreme Court, and the Seventh U.S. Circuit Court of Appeals. She is married to attorney David K. Margerum and enjoys adventures with him and their dog Lola. They have three children and eight grandchildren.

A part time yoga teacher, she has an alter ego, *The Yogarazzi*, known for her yoga posts and photographs on her blog and on the Indy Yoga blog.

For the Appellee

Lyubov Gore joined the Office of the Indiana Attorney General in 2013 and was promoted to the position of Deputy Attorney General in the Criminal Appeals Section in 2014.

Ms. Gore was born in St. Petersburg, Russia and immigrated to Brooklyn, NY when she was six. She attended Fordham University, where she received her B.A. *summa cum laude* in Philosophy and English in 2010. In 2013, Ms. Gore earned her J.D. *cum laude* from the Indiana University Maurer School of Law.

During law school, she served as a research assistant to Professor Robert Heidt and studied abroad at ESADE Law School in Barcelona, Spain. Ms. Gore worked for several general practice law firms and a public interest law firm in New York City.

Ms. Gore is admitted to practice in Indiana, as well as the U.S. District Courts for the Northern and Southern Districts of Indiana. Ms. Gore resides in Indianapolis with her daughter and husband, who is a fellow Deputy Attorney General.



Corydon Capitol was Indiana's first

Indiana doesn't have a lot of 200-year-old buildings, but Hoosiers are fortunate that the first state capitol is one of them.

The simple limestone structure, completed in 1816, is the heart of the Corydon Historic District in Harrison County, as listed on the National Register of Historic Places. Corydon served as the seat of Harrison County government, as territorial capital of the Indiana Territory, and as Indiana's first state capital, from 1816-1825.

Those successive roles followed European settlement of the Northwest Territory, from which the Indiana Territory was carved in 1800.

The capitol building was under construction as the territory prepared for statehood. Among other things, that process involved a formal petition to Congress, adoption of a state constitution, and a minimum population of 60,000.

Territorial delegates crafted Indiana's first Constitution on the site in June 1816, and the first General Assembly convened in the Federal-style building in November 1816. Congress approved Indiana's status as the 19th state on Dec. 11, 1816.

Corydon wasn't new to capital status, having succeeded Vincennes as the territorial capital in 1813. Nor was its status long to last, as the capital was relocated to Indianapolis in 1825, reflecting the population's expansion into lands taken by treaty and war from Native Americans.

But the capitol building remains as a historic site and museum, and Corydon remains the county seat of Harrison County.

SYNOPSIS

An Indianapolis police officer was patrolling near the intersection of Raymond Street and Meridian, in uniform and in a marked police car, when he saw a black truck with a temporary tag. He typed the tag number into his computer and discovered that the tag was not on file. He decided to follow the truck so that he could re-enter the number.

Christopher Cowans was the driver of that truck. He noticed that a police car had started following him, but he did not want to be followed. He thought that if he pulled through a gas station and came out the other side, the police car would continue on its original path and leave him alone. As part of his maneuver, however, Cowans ended up in the middle lane on Meridian going north – that lane was reserved for southbound traffic during that time of day. The officer felt that Cowans was being purposefully evasive, and he turned on his flashing lights.

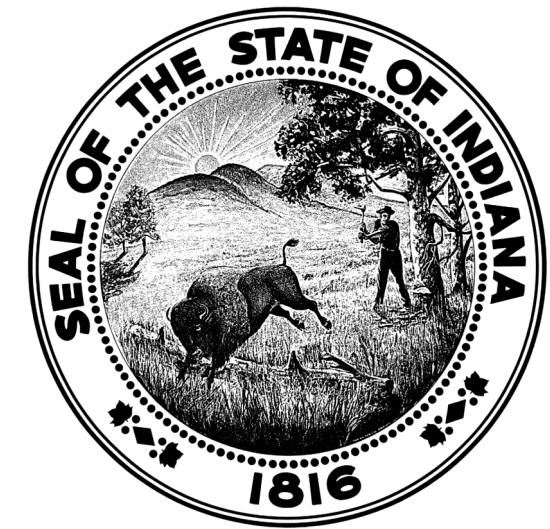
At first, Cowans pulled over to the side of the road. As the officer was filling out paperwork, Cowans started driving again. Cowans did not, however, begin a high-speed car chase – he drove below the speed limit and led the officer on a six-minute, three-mile “chase.” At one point, Cowans stopped at a red light but then continued through the intersection while the light was still red. Around this time, Cowans held his cell phone out of his window. After he turned onto Kentucky Avenue, Cowans found himself behind a long line of vehicles stopped at a red light. He put his truck into park, put both of his hands out of the window and voluntarily surrendered himself.

Cowans would later testify that he had recently seen several accounts on the news of police officers having violent encounters with unarmed Black males. When he saw the officer's lights, Cowans said that he felt scared, and that he decided to go to a better-lit area before stopping, in case the officer did something to him. Cowans testified that he “saw it on the news” that citizens are allowed to drive to a well-lit area before stopping if they are in fear

- continued on p. 2

Court of Appeals of Indiana

*Hearing oral argument at
University of Southern Indiana
Monday, April 4, 2016 @ 1 p.m.*



Cowans v. State

49A05-1508-CR-1196

*On Appeal from Marion Superior Court
The Honorable Helen Marchal, Judge*

Indiana Bicentennial 1816-2016

Synopsis, cont.

of their safety.

Cowans was charged with, and convicted of, resisting law enforcement by fleeing. At issue in this appeal is whether the jury should have heard a “mistake of fact” instruction; in other words, he was factually mistaken about whether he was allowed to continue to a well-lit area.

The State counters that this would be a “mistake of law,” and since ignorance of the law is not an excuse, it was properly excluded.

Court of Appeals Tidbits

- Six of the court’s first 19 judges served in the Civil War, all as Union soldiers or officers. Judge Posey Kime, born 1896, was the first to serve in WWI.
- Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.
- Judge Frank M. Powers served just 33 days. The longest serving judge by far was Patrick D. Sullivan Jr., at more than 16,000 days. He retired in 2007 and served as a senior judge until his death in 2015.
- One of the five original members of the court, Jeptha New, died from a self-inflicted pistol shot in 1892. His term of office was completed by his son, Willard New.
- Judge John C. McNutt’s son, Paul McNutt, was Indiana governor from 1933-37 and appointed two judges to the Court.
- One foreign-born judge attained the court: George L. Reinhard was born in Bavaria in 1843, served in the Civil War, and wrote “The Common Sense Lawyer.”
- Judge Joseph H. Shea resigned his Appeals Court seat in 1916 to become President Woodrow Wilson’s ambassador to Chile.
- Judge V. Sue Shields was the first woman named to the court, in 1978, and Judge (now Justice) Robert D. Rucker was the first African-American, in 1991.

Every Docket Tells a Story

Indiana Appellate Court Reports, Vols. 1, 2, and 3, include the complete written opinions of several hundred cases decided by the Court of Appeals in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana’s economy and society circa 1891 – the same year James Naismith invented basketball.

Agriculture was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter’s cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, “cows were permitted to run at large within the city (of Noblesville) within the day time.”

Railroads were frequent litigants. *Vols. 1, 2, and 3* record 34 railroad-related appeals, many involving damages to livestock, but also other issues. In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company “if unnecessary force was used in expelling the appellee from the train.”

Vol. 1 also includes two cases involving **The Western Union Telegraph Co.** One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies “shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality.”

Then as now, fraught **domestic relations** occupied a significant share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who’d been sued by his daughter for nonpayment of \$3 a week for house and farm work.

Marshall et al v. Bell involved a father’s promissory note for support and maintenance of a “bastard child.”

And in *Adams v. Main*, the court affirmed a trial court’s judgment that the appellant had alienated the affections of the appellee’s wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

Contract disputes comprised a large part of the docket, too, and some of them include telling details about prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of “grade No. 2 red wheat” from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (In December 2013, March 2014 wheat deliveries were trading at \$6.39/bushel at the Chicago Board of Trade.)

Orme v. Cooper, a Floyd County case, reported the value of 571 pounds of harness leather as \$114.20, or 20 cents per pound.

Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

Vols. 1, 2, and 3 include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as “a certain house of ill fame” in Valparaiso).

The court affirmed the trial court’s decision 13 times, or 72 percent.

Today’s Panel of Judges



The Honorable
Melissa S. May

Vanderburgh
County

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

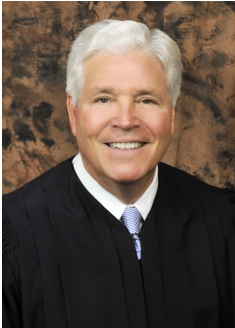
Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association’s Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission (for the public good), Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into “plain English.”

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association’s Standing Committee on Attorney Specialization, on which she’s served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.



The Honorable
John G. Baker.

Monroe County

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court’s First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana’s judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker’s many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

In 2011 he joined the Board of Trus-

- continued on p. 4



The Honorable
Elaine B. Brown

Dubois County

Elaine B. Brown was appointed to the Court of Appeals by Gov. Mitch Daniels in May 2008 and was retained by statewide vote in 2010. Before joining the Court, she was a trial court judge for over 15 years and practiced law for 11 years. She is an adjunct faculty member of the Indiana University Maurer School of Law, a 1996 graduate of the Indiana Judicial College, a 2012 graduate of the Indiana Graduate Program for Judges, and a Fellow of the American Bar Foundation.

Judge Brown served as judge of the Dubois Superior Court from 1987 to 1998 and from January, 2005 to May, 2008. In the years before and between her tenure on the bench, she practiced law in Jasper and in Evansville, first as an associate, then as a senior litigator, and last as a solo practitioner.

Judge Brown earned a bachelor’s degree With Distinction from Indiana University in Bloomington in 1976, and her J.D. from the IU (now Maurer) School of Law in 1982. She was a teacher in the Jasper School Corporation for three years before entering law school.

A large part of her professional focus during her years on the trial court bench was on substance abuse issues. She initiated a countywide Alcohol and Drug program, created the Dubois County Drug Court, formed the county’s first Community Corrections Advisory Board, which oversees all work release, home detention, and community service programs, and served as President of the Dubois County Substance Abuse Council.

Judge Brown currently serves on the Appellate Practice Section Council, the Judicial System Improvement Committee, and the Attorney Fee Dispute Resolution Committee of the Indiana

- continued on p. 4